loops being reported under a DSL resale measure.[37] SBC submitted corrected data to the Commission on February 1, 2000.[38] Unfortunately, SBC has not yet issued corrected reports for individual CLECs, which are necessary for them to reconcile disputed data with SBC. Although the corrected performance data show slightly better performance by SBC, there is still reason to question the reliability of the data reported in PM 55.1, for two reasons.

First, Covad claims that SBC is improperly excluding almost half of its orders from PM 55.1, strongly disputing SBC's contention that it has properly excluded the orders because Covad requested due dates outside the available interval.[39] A resolution of this dispute should be relatively straightforward if SBC identifies to Covad (and other CLECs) the particular orders that it claims to have excluded because of out-of-interval due dates. SBC has not done so to date.

Second, the measurement is clouded by disputes over whether SBC has actually installed a working loop at the point in time when it claims to have done so. For example, if the CLEC claims the loop needed additional work, its data would show a longer installation interval than SBC's data. Agreement on the time that loops are installed can best be determined by joint-acceptance testing of loop installations. Rhythms' comments, however, state that until very recently, SBC had refused to engage in acceptance testing for DSL loops, although ordered by the

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[37] NorthPoint Mailloux Aff. ¶ 6. This incident reflects poorly on SBC's claim that Telcordia has validated its data reporting systems. SBC Dysart Aff. ¶¶ 65-78.

[38] In doing so, SBC did not expressly note that the changes in the data had been made, explain why the processing error had not been previously detected or explain what steps it might take to detect other possible errors in its unaudited data reports.

[39] Covad Comments at 29-31; Covad Wall Decl. ¶ 16.

Texas PUC to do so.[40] It may be necessary to wait until performance data that reflect acceptance testing are available before SBC's report on PM 55.1 can be considered reliable.

* * * *

Even if the deficiencies in SBC's performance data are limited to the specific examples discussed above, those deficiencies substantially undermine SBC's claim to have provided nondiscriminatory access to DSL loops, since the deficient performance data relate to several competitively important dimensions of SBC's DSL performance. We are concerned, moreover, that those deficiencies may be symptomatic of more serious problems in the reliability of SBC's performance measurement systems and processes. The Department relies heavily on these performance measures as an objective indicator of the quality of SBC's performance, and we regard it as critical that applicants insure the utmost reliability of such data.

B. The Performance Reports Submitted by SBC Demonstrate That in Important Respects Its Provision of Loops to Its DSL Competitors Is Markedly Inferior to That Provided to Its Retail Operation.

SBC's DSL competitors rely principally on two types of unbundled loops: the DSL loop and the BRI ISDN loop.[41] SBC's application fails to demonstrate acceptable performance in processing orders for DSL and BRI (ISDN) loops because, as described above, its performance data regarding the provision of loop make-up information to CLECs are fundamentally flawed,

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[40] Rhythms Lopez/Baros Aff. ¶ 22.

[41] A DSL loop is a continuous copper line from the collocation site in SBC's central office to the end user, which is not equipped with "repeaters," the equipment used to increase the transmitted signal. The ISDN BRI loop may include a section of fiber optic cable and should include ISDN repeaters for long loops.

and because they fail entirely to report on the return of firm order commitments for DSL. With respect to provisioning and maintenance and repair, SBC's performance reports clearly indicate discrimination with respect to both types of loops for carriers offering DSL services.[42]

1. SBC's Provisioning of DSL Loops

Even with the limited data available, the performance reports demonstrate that SBC is failing to provide nondiscriminatory performance, as indicated by several performance measures that the Texas PUC has deemed competition affecting.

- **PM 58.** One of the most significant measures for DSL provisioning is PM 58 ("Percent SWBT Caused Missed Due Dates"), a high Tier 1 and 2 measure.[43] The measure shows a rate of 12.1 percent missed due dates for CLECs in December (on a total of 495 loops), compared to 6.3 percent missed due dates for SBC's retail service. This result is especially troubling because the number of missed due dates has steadily increased over the last three months as the number of

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[42] The Telcordia test results regarding DSL lines provide no evidence that SBC is adequately providing DSL-capable loops to its competitors. To the contrary, Telcordia advised that further testing of SBC's ability to provision these loops was needed. Telcordia Final Report at 7 (specifically suggesting further analysis of ADSL and SDSL provisioning as one of "seven next steps").

[43] Tier 1 measures are deemed "customer" affecting and Tier 2 measures are "competition" affecting under the Texas performance system. *See* SBC Dysart Aff. ¶ 46 & Attach. H. The parity comparison for PM 58 is with SBC's DS1 service; data are supposed to be reported both on a CLEC-specific and aggregate basis. Business Rules 1.6 at A-78.

CLEC orders has increased -- although the total number of loops is still far below expected commercial volumes.[44]

• **PM 60.** PM 60 ("Percent Missed Due Dates Due To Lack of Facilities [>30 days]") measures the percentage of loops where SBC missed a committed due date by more than 30 days and attributed the miss to an absence of available facilities.[45] SBC missed 6.7 percent of due dates for CLECs (on a total of 495 loops) compared to only 0.6 percent for SBC's circuits.[46]

• **PM 62.** PM 62 ("Average Delay Days for SWBT Missed Due Dates") measures the calendar days between the scheduled due date and the actual completion date.[47] SBC's corrected data for this measure show that SBC missed 60 due dates for December, with an average number of delay days of 6.25 for the CLECs and 4.06 for SBC.[48]

• **PM 55.1.** PM 55.1 ("Average Installation Interval DSL") is a high Tier 1 and 2 measure of the time from completion of loop qualification to the completion of the service order.[49] For

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[44] SBC 1999 Aggregated Performance Data, Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") (Digital Subscriber Lines-DSL) at 271-No. 58c.

[45] Business Rules 1.6 at A-81.

[46] SBC 1999 Aggregated Performance Data, Measurement No. 60 ("Percent Missed Due Dates Due to Lack of Facilities") (Digital Subscriber Lines (DSL)), at 271-No. 60c.

[47] Business Rules 1.6 at A-83.

[48] *Compare* SBC 1999 Aggregated Performance Data, Measurement No. 62 ("Average Delay Days for SWBT Caused Missed Due Dates") (Digital Subscriber Line (DSL)) at 271-No. 62c *with* SBC DSL Delay Days *Ex Parte* at Tab 1 (Feb. 7, 2000) (correcting the aggregate performance data filed for Measurement No. 62 on Feb. 1, 2000).

[49] Business Rules 1.6 at A-71.

December, the average interval for conditioned loops was 14.23 days for CLECs compared to 11.50 days for SBC. This difference was not statistically significant, but, as noted previously, there are serious questions about the accuracy of the data for PM 55.1 arising from the large number of excluded orders. The results reported for December represented a significant improvement over the results for November which were 19.30 days for CLECs and 11.50 days for SBC.[50]

• **PM 59.** PM 59 ("Percent [Trouble] Reports") is a high Tier 1 and 2 measure that tracks the percentage of trouble reports for newly installed DSL loops.[51] SBC tracked 398 DSL loops used by CLECs for December, which had a 15.8 percent rate for trouble reports, compared to a trouble report rate of only 5.2 percent for SBC. This performance deteriorated badly as volumes increased in December.[52]

• **PM 65.** PM 65 ('Trouble Report Rate [For DSL Loops]") is a high Tier 1 and 2 measure of the monthly repair rate for all installed DSL loops.[53] In December 1999, SBC reported 75 trouble reports on 974 CLEC circuits, a 7.7 percent rate compared to a 4.6 percent

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[50] SBC 1999 Aggregated Performance Data, Measurement No. 55.1 ("Average Installation Interval-DSL) (Requires Conditioning) at 271-No. 55.1c.

[51] Business Rules 1.6 at A-80.

[52] SBC 1999 Aggregated Performance Data, Measurement No. 59 ("Percent Trouble Reports on N.T.C Orders Within 30 Days) (Digital Subscriber Line-DSL) at 271-No. 59c.

[53] Business Rules 1.6 at A-86.

rate for SBC's retail lines. This measure also shows decreasing performance over time as volumes rise.[54]

2. SBC's Provisioning of ISDN BRI Loops.

SBC's performance reports for BRI loops also demonstrate substantial discrimination and, as in the case of DSL loops, in several cases display a clear trend of declining performance as volumes have increased.

• **PM 56.** PM 56 ("Percent [BRI Loop] Installations within "X" Days") is a high Tier 1 and Tier 2 measure of installation intervals for BRI loops that excludes missed due dates caused by the CLECs or their end-user customers requesting installation intervals longer than the defined standard interval. CLEC orders of one to ten BRI loops are supposed to be installed in three days.[55] For these BRI loops, SBC's on time performance has dropped from 84.6 percent in October to 71.6 percent in December.[56]

• **PM 58.** PM 58 ("Percent SWBT Caused Missed Due Dates [for BRI Loops]"), a high Tier 1 and 2 measure, reports the percent of installations not completed on the due date.[57] For BRI loops in December, SBC reports that it was responsible for missed due dates on 23.3 percent

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[54] SBC 1999 Aggregated Performance Data, Measure No. 65 ("Trouble Report Rate %") (Digital Subscriber Line-DSL) at 271-No. 65c.

[55] Business Rules 1.6 at A-74 to A-75.

[56] SBC 1999 Aggregated Performance Data, Measure No. 56 ("Percent Installed Within "X" Days") (BRI Loops) at 271-No. 56a.

[57] Business Rules 1.6 at A-78 to A-79.

of CLEC circuits compared to 15.5 percent for its own customers. SBC's performance on this measure also deteriorated significantly over the past several months.[58]

• **PM 60.** PM 60 ("Percent Missed Due Dates Due To Lack of Facilities") records the percentage of loops for which SBC does not have facilities after giving the CLEC a committed due date.[59] Out of 374 circuits tracked in December, SBC missed 12 percent of CLEC due dates (45) compared to only 0.8 percent for its own customers. This problem worsened significantly as the number of circuits increased in December.[60]

• **PM 59.** PM 59 ("Percent [Installation Trouble] Reports") is a high Tier 1 and 2 measure that tracks the percentage of trouble reports for newly installed loops.[61] This measure tracked 444 CLEC BRI loops for December which had a 20.9 percent trouble rate (93 trouble reports) compared to a trouble rate of 5.1 percent for SBC's retail lines. This performance metric appears to show deteriorating performance as volumes have increased over the last three months with the reported rate doubling between October and December 1999.[62]

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[58] SBC 1999 Aggregated Performance Data, Measure No. 58 ("Percent SWBT Cuased Missed Due Dates) (BRI Loops) at 271-No. 58b.

[59] Business Rules 1.6 at A-81.

[60] SBC 1999 Aggregated Performance Data, Measure No. 60 ("Percent Missed Due Dates Due To Lack of Facilities") (BRI Loop) at 271-No. 60b.

[61] Business Rules 1.6 at A-80.

[62] SBC 1999 Aggregated Performance Data, Measure No. 59 ("Percent Trouble Reports on N.T.C Orders within 30 Days") (BRI Loops) at 271-No. 59b.

• **PM 65.** PM 65 ("Trouble Report Rate [For BRI Loops]") is a high Tier 1 and 2 measure of trouble reports for all installed loops received within the month.[63] For December, SBC reported a 19.3 percent trouble rate (116 troubles) for CLEC BRI loops, compared to a 2.5 percent rate for SBC BRI loops. Like other measures noted above, this problem worsened as volumes have increased.[64]

• **PM 67.** PM 67 ("Mean Time to Restore (hours) -Dispatch") is a high Tier 1 and 2 measure.[65] For December the mean time to restore service for CLEC lines was 7.81 hours, compared to 5.84 hours for SBC's retail BRI lines. Performance on this measure also appears to be steadily deteriorating as volumes increase.[66]

Taken as a whole, these performance reports show a service environment in which CLECs attempting to compete against SBC's retail DSL services are seriously disadvantaged at present by SBC's inadequate wholesale performance, and may well face greater disadvantages in the future if SBC's performance continues to decline in the face of higher volumes of CLEC orders.[67]

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[63] Business Rules 1.6 at A-86.

[64] SBC 1999 Aggregated Performance Data, Measure No. 65 ("Trouble Report Rate %") (BRI Loop with Test Access) at 271-No. 65b.

[65] Business Rules 1.6 at A-88.

[66] SBC 1999 Aggregated Performance Data, Measure No. 67 ("Mean Time To Resotre (Hours)-Dispatch") (BRI Loop with Test Access) at 271-No. 67b.

[67] The Department believes that it would be inappropriate to rely on the Texas Performance Remedy Plan ("PRP") to improve SBC's poor performance in provisioning DSL-capable loops. Texas PUC Evaluation at 65. As the Department stated in its New York

C. SBC Has Not Demonstrated That Its Proposed Advanced Services Affiliate Will Eliminate Discrimination

The Commission's New York Order stated that a future 271 applicant would have the option of demonstrating nondiscriminatory treatment of DSL competitors by implementing a fully operational, separate affiliate for advanced services.[68] This application provides the first opportunity for the Commission to determine the specific requirements that will be needed to prevent discrimination against DSL competitors when a BOC chooses this alternative. It is

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Evaluation, a performance maintenance plan, such as the PRP, is intended to prevent *backsliding* in performance, and should not be relied upon as a bootstrap mechanism to pull poor performance into apparent compliance. *See* DOJ New York Evaluation at 36-40. Moreover, it is unclear whether the structure and subcaps of the PRP permit it to be an adequate deterrent to backsliding on services such as DSL. While SBC has raised the overall annual cap to $289 million, SBC Dysart Aff. ¶ 52, the underlying per occurrence and per measurement subcaps were not adjusted. As a result, any penalties may be capped at a level too low to lead to any significant, behavior affecting, payment. *See* Texas PUC Staff Performance Measures Evaluation at 9-10, n.4 (Tier 2 damages for three months ended August, 1999 over $5 million before application of the measurement caps, but only $389,033 after). Although SBC modified the PRP slightly in December, including increasing the Tier 2 payment for low-volume services such as DSL, SBC Dysart Aff. ¶¶ 48-50, it is not clear whether its potential liabilities in the event of poor performance were, in fact, significantly enhanced. Moreover, the DSL performance measures associated with the CLECs' interconnection agreement have yet to be defined, so it is unclear whether these CLECs are eligible to receive compensation under the PRP.

[68] *FCC New York Order* ¶ 330.

critically important for the Commission to establish two sets of requirements in this context,[69] without which a separate affiliate structure cannot rationally be said to prevent discrimination.[70]

First, the Commission should rigorously examine the relationship that will exist between the BOC and its affiliate to ensure that the affiliate's relationship to the BOC is the same in all relevant respects as the relationship between CLECs and the BOC. SBC provides virtually no information about these matters, and thus on its face cannot be deemed to provide satisfactory evidence of nondiscrimination.

Second, whatever the ostensible relationship between SBC and its affiliate, there must be adequate mechanisms to detect, punish and deter any discrimination that may occur. An essential component of this mechanism must be meaningful, accurate and reproducible performance measures, as we have previously discussed. Absent the ability to detect discrimination through such measures, SBC could blatantly discriminate in favor of its own retail operations, whether those operations are conducted by a separate affiliate or not. As we have previously explained,

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[69] We note that a separate affiliate provides *no* assurance of adequate performance in situations where a CLEC seeks access to unbundled elements in order to provide a service that the separate affiliate does not provide. This situation may arise when the CLEC is providing a service that is provided by a BOC, rather than its affiliate, or when the CLEC is providing a service that is not provided by either the BOC or its affiliate (though the CLEC service may be competitive with some other service of the BOC or its affiliate). *See FCC SBC-Ameritech Merger Order* ¶¶ 177, 197 ("For innovative entrants in particular, parity rules will not always suffice.")

[70] A separate affiliate does nothing to alter any underlying incentive to discriminate. At best, a separate affiliate structure may make it more difficult to effectuate some forms of discrimination, and make it easier to detect discrimination.

SBC's performance data with respect to DSL services have serious flaws, and therefore cannot be relied upon as an effective mechanism to detect discrimination.

Apart from the two elements described above, which the Commission should require in connection with any assessment of a separate affiliate proposal, an applicant that has failed to provide nondiscriminatory treatment prior to the establishment of a separate affiliate should be required to demonstrate that the implementation of the separate affiliate structure has in fact resulted in nondiscriminatory performance. We believe it would be quite unrealistic to expect a BOC and its affiliate to be unmindful of their mutual economic interests, and quite difficult to foreclose all of the avenues by which they might seek illegitimate marketplace advantages over their competitors. A concrete demonstration of nondiscrimination, rather than a abstract promise, will provide much greater assurance that the separate affiliate structure is in fact sufficient to prevent discrimination. Such a demonstration should be a simple matter if the separate affiliate is "fully operational" and if meaningful, reliable and reproducible performance measures are in place.

SBC's affiliate, Advanced Solutions Inc. (ASI), is not yet fully operational. SBC has not demonstrated that it has actually provided nondiscriminatory performance, or even explained why the separate affiliate structure should be expected to remedy the documented current performance problems. We presume that SBC would not implement a separate affiliate that would degrade the quality of performance for its own retail operations. But unless it does so, the current discrimination could be ended only by improving the quality of performance provided to

the CLECs. SBC's application offers no explanation of how this would be accomplished merely by transferring its own retail operations to the new affiliate.

In sum, we conclude that SBC has failed to establish that it is providing, or will provide, nondiscriminatory access to unbundled loops for DSL services.

IV. SBC's Wholesale Performance In Providing Competitors with Unbundled Local Loops Is Inadequate.

The use of unbundled loops is an important component of CLECs' efforts to provide service to small and medium-sized business customers. SBC's application fails to demonstrate adequate performance in providing unbundled loops. As best we can determine, SBC's performance with regard to "hot cuts" is worse than Bell Atlantic's performance in New York, which the Commission concluded was "minimally acceptable."

SBC uses two hot cut processes in Texas. SBC states that the fully coordinated hot cut ("CHC") process is to be used for conversions of orders of 20 or more lines, or those which must be accomplished outside normal business hours.[71] CHC orders are manually processed in SBC's order processing center and require intensive coordination and communication between SBC and the CLEC during the performance of the hot cut. SBC states that the frame due time ("FDT") hot cut process is to be used for cuts of fewer than 20 lines that are taking place between 8 a.m. and 5 p.m., Monday through Friday.[72] FDT orders are capable of flowing through SBC's order processing center without manual work by SBC's representatives. FDT cuts require both the

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[71] SBC Conway Aff. ¶ 79. Many of the cuts currently being done using the CHC method are actually of lower loop volumes and within business hours, and thus would qualify to be done as FDT cuts. *Id.* ¶ 86; *see also* SBC Dysart Aff. ¶ 653 (CHC orders included in a sample of August through October data average three to four lines per order.).

[72] SBC Conway Aff. ¶ 76.

CLEC and SBC to do the necessary work at pre-arranged times, but no communication between them is required at the time of the hot cut.[73]

SBC has encouraged, if not required, CLECs to switch from CHC to FDT for smaller volume loop cuts.[74] SBC has expressed the view that CHC is too resource-intensive to support commercial levels of demand for these lower-loop-volume orders and that transition to FDT would alleviate CHC capacity constraints.[75] SBC may charge a premium if CLECs select the intensively manual CHC process.[76] In light of this, the use of CHC appears to be rapidly declining, while the use of FDT appears to be rapidly increasing. In November 1999, SBC provisioned 2375 CHC loops and 653 FDT loops.[77] In December 1999, SBC provisioned 1284 CHC loops and 1666 FDT loops.[78]

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[73] Although SBC's Conway affidavit states that the FDT process concludes with a post-cut notification to the CLEC that the cut has been completed and the number should be ported, SBC Conway Aff. ¶ 87, the FDT process flow attached thereto makes clear that the CLECs are to automatically port the number at the scheduled frame due time. *Id.*, Attach. J at J-2. The only post-cut contact between the CLEC and SBC is to occur if the CLEC's 30-minute and 60-minute line tests fail, in which case the CLEC may call SBC to inform it that a problem has arisen. *Id.* at J-6; *see also* AT&T DeYoung Hot Cuts Decl. ¶ 42(b) (At the designated frame due time, the CLEC sends an "activate" message to begin the number port, and SBC begins the loop cut.).

[74] SBC Conway Aff. ¶ 79.

[75] AT&T DeYoung Hot Cuts Decl. ¶¶ 45-47 (citing SBC letters, e-mails and statements presented to the Texas PUC).

[76] *Id.* ¶ 44.

[77] SBC Conway Aff. ¶ 79.

[78] SBC Hot Cut *Ex Parte* at 2.

SBC's application provides performance data for CHC hot cuts, but not for FDT hot cuts, and the Texas PUC's analysis of SBC's hot cut performance appears to be based solely on CHC performance.[79] As we explain below, the currently available CHC performance data indicate inadequate provisioning and perhaps other problems. After its initial application, SBC submitted limited data on FDT performance, but those data fail to address the most serious concerns relating to FDT performance, and therefore fail to show that SBC is providing satisfactory performance.

The most apparent problems, both for CHC and FDT, arise in connection with SBC's provisioning of hot cuts. Other potential problems relate to SBC's processing of UNE-loop orders -- specifically its ability to provide timely order confirmations and rejections -- and post-provisioning failures that may lead to double billing and dropped directory listings. These problems appear to be increasing as the volume of UNE-loop orders rises.

A. Hot Cut Provisioning

In its recent New York Order, the Commission found that Bell Atlantic had provided adequate hot cut performance, but emphasized that:

> although we consider Bell Atlantic's demonstrated on-time hot cut performance at rates at or above 90 percent, in combination with the evidence indicating that fewer than five percent of hot cuts resulted in service outages and that fewer than two percent of hot cut lines had reported installation troubles, to be sufficient to establish compliance with the competitive checklist, we view this as a *minimally acceptable showing*. We would thus have serious concerns if the level of

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[79] The Texas PUC had no data on FDT before it, and did not comment on the FDT process in its recommendation except to state that measures to capture FDT data will be addressed at the six-month PM review in April 2000. Texas PUC Evaluation at 59.

> performance in any one of these three measures were to decline and would be prepared, in that event, to take whatever enforcement action is warranted. We are especially concerned with hot cut performance because of the substantial risk that an untimely or defective cutover will result in an end-user customer's loss of service for more than a brief period, as well as the effect of such disruptions upon competitors.[80]

The currently available evidence indicates that SBC's hot cut performance in Texas is not as good as Bell Atlantic's "minimally acceptable" performance in New York. As a result, CLECs are constrained in their ability to enter the Texas market using UNE-loops.[81]

1. CHC Hot Cut Provisioning

a. Timeliness of Provisioning

In New York, the Commission concluded that Bell Atlantic completed 90 percent of hot cut orders within the benchmark time, specifically citing Bell Atlantic's completion of orders for fewer than ten loops within one hour.[82] The only directly comparable data provided by SBC are

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[80] *FCC New York Order* ¶ 309 (emphasis added).

[81] *See* Nextlink Barron Aff. ¶ 26 (SBC's service-related problems on hot cuts "directly impact NEXTLINK's ability to provision service to its end-user customers on a timely basis."); Nextlink Draper Aff. ¶ 37 & Attach. C (quantifying time and money spent to minimize the effect of premature cuts on Nextlink's end-user customers); CapRock Thompson Aff. ¶ 21 (SBC's poor hot cut performance has forced CapRock to delay its pace of market entry.); NTS Elliott Aff. ¶¶ 8, 22 ("NTS estimates that, due to SWBT's inability to correctly provision UNE cuts, NTS is submitting only about one-half the order volumes that NTS could handle if SWBT's performance were as promised."); AT&T Holtz Decl. ¶¶ 10-13 ("SWBT has failed to develop and implement provisioning processes that are robust and accurate enough to enable CLECs such as AT&T to open up our marketing channels and serve this [small business] market at commercial volumes.").

[82] *FCC New York Order* ¶¶ 292-298.

(1) "sample" data[83] which purport to show that from August through October 1999, 85.6 percent of its CHC hot cut orders were completed within one hour,[84] and (2) December 1999 data

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[83] SBC Dysart Aff. ¶¶ 652-56. These data are not drawn from a random sample, but rather represent performance only on orders for which SBC technicians recorded both a start and stop time for the hot cut. The orders included in the sample averaged three to four loops per order. SBC states that it used these data because "[n]ot all cutover logs during these months contained both a start and stop time, due to varying proficiency levels among technicians responsible for recording this information." SBC Hot Cut *Ex Parte* at 1. In theory, it is possible that this non-random sample could understate SBC's true on-time performance, but we are aware of no basis for assuming that the technicians who were less proficient at recording start and stop times would be more proficient at handling other aspects of hot cut provisioning, or that start and stop times would more likely be recorded for late-completed hot cuts than for those completed on time.

The Texas PUC cited these timeliness data in finding SBC's hot cut performance acceptable. Texas PUC Evaluation at 59. The Texas PUC voted on SBC's section 271 application at its December 16, 1999 Open Meeting, and thus was unable to consider the implications of SBC's January 21, 2000 hot cut *Ex Parte* with its fuller explanation of SBC's sample selection.

The number of CHC loops reflected in the sample is significantly lower than the number of CHC loops stated in its performance reports. *Compare* SBC Dysart Aff. ¶ 653 (showing 456 CHC loops in August 1999, 206 CHC loops in September 1999 and 398 CHC loops in October 1999) *with* SBC 1999 Aggregated Performance Data, Measurement No. 114 ("Percent of Premature Disconnects") at 271-No. 114 *and id.*, Measurement No. 115 ("Percent SWBT Caused Delayed Coordinated Cutovers") at 271-No. 115a, 271-No. 115b (showing total CHCs for loop-with-LNP and loop-with-INP of 3125 in August 1999, 4134 in September 1999, 2980 in October 1999, and 1137 in November 1999). The November 1999 CHC data from the performance measures also fail to match the November 1999 CHC data included in SBC Conway Aff. ¶ 79 (2375 CHCs completed in November 1999).

[84] Prior to December 16, 1999, the CHC cutover window, as understood by the CLECs and previously referenced by PUC staff, had been 60 minutes. AT&T DeYoung Hot Cuts Decl. ¶ 40(b) (SBC "must notify AT&T, within 60 minutes of the authorized cut start, that the cut has been completed."); Texas PUC Staff Performance Measures Evaluation at 54 (referencing the need for a new measure to capture cuts lasting longer than 60 minutes). At the December 16, 1999 Open Meeting, SBC proposed, and the PUC adopted as an interim measure, PM 114.1 to measure the duration of the CHC cut, referring to a 120-minute window. SBC defined the new measure to start measuring at the time when the CLEC calls SBC to start the cut, and to stop measuring at the time when the technician calls SBC's Local Ordering Center ("LOC") to report the work complete. SBC Dysart Aff. ¶ 654. SBC does not include in this

showing that 86.3 percent of all CHC hot cut loops[85] were completed within one hour, after excluding "misses" for which SBC claimed CLECs were responsible.[86]

b. Service Outages Upon Provisioning CHC Hot Cuts

In New York, the Commission found that fewer than five percent of Bell Atlantic's hot cuts resulted in service outages. In Texas, a joint SBC/AT&T analysis of CHC data for August, September, and October determined that service outages attributable to SBC performance

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reported interval any measure of the time it took to notify or attempt to notify the CLEC that the cut was complete, although it is *this* notification that alerts the CLEC to port the number and test the line -- necessary steps for the end-user to receive fully functional telephone service. AT&T DeYoung Hot Cuts Decl. ¶ 40 ("[I]f SWBT has completed the cut but delayed notifying AT&T, the customer will be unable to receive incoming calls throughout the entire period of delay."); *see also* Texas PUC Evaluation at 63-64; *supra* discussion pp. 12-13 (Texas PUC recognized the importance of including the time period for CLEC notification in PM 57, Average Response Time for Loop Make-Up Information, which measures the timeliness of SBC's response to CLEC requests for DSL loop make-up information.).

SBC asserts that the Department has found that a two-hour cutover window is the appropriate interval, *see* SBC Dysart Aff. ¶ 656; the Department, however, has never articulated such a standard.

[85] SBC's December data is presented in *loops*, rather than in *orders*, and it cannot be determined from the data whether the percent of loops cutover within the relevant time period is an accurate indicator of the percentage of orders completed within that period.

[86] SBC did not state how many of the more-than-one-hour hot cuts it attributed to CLEC-caused misses, and we do not know whether CLECs would agree or disagree with SBC's categorization. Without these exclusions, SBC's December data indicate that 82.2% of CHC hot cuts were completed within one hour. SBC Hot Cut *Ex Parte* at 2.

occurred on 8.2 percent of AT&T's CHC orders,[87] an outage rate nearly twice as high as Bell Atlantic's rate of 4.5 percent in New York.[88]

c. Post-Provisioning Trouble Reports for CHC Hot Cuts

In New York, the Commission found that fewer than two percent of hot cuts generated trouble reports (*i.e.*, service problems reported after a hot cut had been accepted by a CLEC) within seven days. There are no precisely comparable data from Texas, but the data that are available suggest that SBC's performance is no better, and may be slightly worse, than Bell Atlantic's performance in New York: SBC's reported data indicate that 2.18 percent of CHC hot cuts generated trouble reports within ten days.[89]

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[87] This reconciliation was performed at the request of the Texas PUC. AT&T DeYoung Hot Cuts Decl. ¶¶ 85 n.56, 87 (These outages are not captured in SBC's trouble report rate measure, which excludes outages reported before a cutover is accepted.). These data were submitted to the Texas PUC on December 16, 1999, *see* SBC & AT&T Royer/Van de Water Joint Aff., but were not discussed either during its Open Meeting, which occurred that morning, or in its formal comments to the Commission. *See also* Nextlink Barron Aff. ¶ 27 (In the last week of December 1999, 30% of Nextlink's completed hot cut orders were directly affected by non-operational facilities.).

[88] *FCC New York Order* ¶ 302 n.961.

[89] SBC Hot Cut *Ex Parte* at 2. These data were specifically collected for the *Ex Parte*. For August 1999 through December 1999, SBC's officially reported 30-day I-report rate has risen from 2.6% to 5.7%. SBC 1999 Aggregated Performance Data, Measurement No. 59 ("Percent Trouble Reports on N. T. C Orders Within 30 Days") (8.0 dB Loop) at 271-No. 59a. SBC reports I-reports for AT&T rising from 1.4% in August to 9.5% in October; and AT&T states that 70% of its trouble reports are actually filed within the first seven days after installation, resulting in a 7% 7-day I-report rate. AT&T DeYoung Hot Cuts Decl. ¶¶ 123-124.

2. Timeliness and Service Outages for FDT Hot Cuts

As noted above, SBC has provided very little evidence of its performance in providing hot cuts through the FDT process. This failure is cause for concern in light of SBC's policy to strongly encourage the use of the FDT process, and in light of problems with that process that have been documented by commenters.[90]

AT&T's initial trial of the FDT process, in August 1999, resulted in failures on nine of 17 orders; each failure was due to SBC failing to begin the cut while AT&T had ported the number as scheduled.[91] A second trial by AT&T, in November and December, resulted in failures on 20 percent of the orders (7.7 percent of November orders and 33.3 percent of December orders).[92] AT&T's FDT data, which have been reconciled with SBC, show (1) that a significant number of AT&T's FDT orders experienced service outages and (2) that 50 percent of these outages were caused by the SBC technician not starting the cut at the scheduled time. Other commenters report similar experiences with the FDT process.[93] Given that FDT cuts are only done during

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[90] It is necessary to evalute the adequacy of SBC's FDT performance not only because of the recent shift in volume from CHC to FDT, but also because SBC's statements regarding CHC capacity constraints directly implicate the scalability of the CHC process and raise doubts that even the current level of CHC performance could be maintained at higher volumes.

[91] AT&T DeYoung Hot Cuts Decl. ¶¶ 59-60.

[92] *Id.* ¶¶ 65-70.

[93] NTS Elliott Aff. ¶¶ 19-21 (NTS has converted approximately 1500 lines using FDT; SBC has failed to follow the procedures on as much as 30% of these; most often SBC has cut over the end-user's service "one or more days in advance of the designated frame due time" -- often before NTS has completed its facilities work or ported the number.); CapRock Thompson Aff. ¶¶ 19-20 (CapRock has experienced a "frequent" number of premature cuts one or more

business hours, problems such as these are immediately and significantly impacting to the typical, small business end-user customer, who loses phone service during the business day.

SBC has provided only limited information on the duration of FDT hot cuts, and no information on the extent of service outages. After excluding delays in completing hot cuts that it attributed to CLECs, SBC reported that 90.8 percent of FDT hot cut loops were completed within the 30-minute period contemplated under this process, and that 93.8 percent of hot cut loops were completed within one hour.[94] Service outages may result, however, from a failure to *complete* the hot cut by the scheduled time (whether due to a late start or an overlong duration), and from SBC's premature *initiation* of the hot cut. SBC's FDT data do not address these timeliness issues.[95] SBC also fails to provide any data directly measuring the extent of service

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days before the scheduled time and before CapRock has established its service, including porting the number, to the customer.); *see also* AT&T DeYoung Hot Cuts Decl. ¶ 43 (stating the risk of premature FDT cut is magnified because SBC proceeds without waiting for CLEC call).

[94] SBC Hot Cut *Ex Parte* at 2. As noted previously, SBC lists the number of loops cutover within the window but not the number of orders completed within the window, and it cannot be determined from the data whether the percentage of loops cutover within the window is an accurate indicator of the percentage of orders completed within the window.

[95] The SBC Hot Cut *Ex Parte* does not explain whether the start time on which it based its duration calculation is the same as the scheduled frame due time. Thus, it is unclear whether premature FDT cuts or late-started FDT cuts are reflected in the presented data.

outages associated with the FDT process,[96] despite the apparently well-documented complaints about these problems.[97]

In an effort to improve its hot cut provisioning performance, SBC has instituted new procedures and work groups.[98] The effects of these changes, however, have not yet been established, and therefore provide no basis for disregarding the inadequacies of historical performance reflected in the record.

B. SBC's UNE-Loop Order Processing Performance Has Fallen Below the Standards Set by the Texas PUC as Volumes Have Risen.

SBC has experienced a disturbing number of problems in processing orders as the volume of orders has increased; there is a significant risk that these problems may become even more acute as UNE-loop orders continue to rise. Similarly, SBC has failed to resolve problems observed in its post-provisioning processing of order information.

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[96] In addition to service outages that may result if SBC initiates the hot cut prematurely or completes it late, outages may also occur if the hot cut is not otherwise performed correctly.

[97] Although SBC nowhere addresses FDT outages upon provisioning, SBC did provide data indicating that 2.88% of FDT hot cuts generated trouble reports within ten days, again, a higher I-report rate than that accepted by the FCC in New York. SBC Hot Cut *Ex Parte* at 2.

[98] In December 1999, as a result of the reconciliation of CHC data with AT&T, SBC and AT&T agreed to a new procedure for CHCs. SBC Conway Aff. ¶ 97. In September 1999, SBC established an FDT unit within the LOC. *Id.* ¶ 77. In October 1999, SBC established a committee to resolve central office issues on UNE circuits; "issues being worked on include upgrading the training on the proper use of trouble codes, proper escalation procedures and improving coordination between departmental work groups." SBC Dysart Aff. ¶ 363 (in the context of discussing SBC's 30-day I-report rate on 8 dB loops).

Over one-half of the UNE-loop orders which are electronically submitted via the EDI or LEX interfaces are manually processed by SBC's Local Service Center ("LSC").[99] Manual processing may occur at several points in the order process flow.[100] SBC's systems are designed so that some types of electronically submitted orders, such as CHC hot cuts or Related Purchase Orders ("RPONs"),[101] must be manually input into SBC's back-end legacy systems by SBC representatives. In addition, some electronically submitted orders which have errors are either manually rejected by the SBC representatives, or, if the error is not the responsibility of the CLEC, are manually entered into SBC's order processing systems by SBC representatives. The use of manual processing is not in itself an indication of inadequacy in an order processing system, but systems that rely on a high degree of manual processing may experience serious

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[99] *Ex parte* data submitted by SBC to the Commission shows that total EDI flow-through for UNE (excluding UNE-platform) was 25.53% in September ("Total SMFIDs" 470), 29.63% in October ("Total SMFIDs" 1458) and 33.81% in November ("Total SMFIDs" 2431). SBC Reject and Flow Through Rate *Ex Parte* at 6 (updating SBC Ham Aff., Attach. X-2). Total LEX flow-through for UNE (excluding UNE-platform) was 31.70% in September ("Total SMFIDs" 10,285), 33.68% in October ("Total SMFIDs" 9540), and 40.17% in November ("Total SMFIDs" 11,812). *Id.* at 58.

[100] Whether an order (an LSR) is submitted over LEX or over EDI, once it hits SBC's LASR system, the resulting process flows are identical. SBC Ham Aff. ¶ 138.

[101] RPONs are often necessary with new loop orders. *See* Nextlink Draper Aff. ¶ 20 (referencing need for careful coordination of new loops with LNP provisioning, "[I]f . . . not successful, then the new NEXTLINK customer's first experience with our company will be a loss of service . . . [and] only NEXTLINK is held accountable in the marketplace for SWBT's underlying poor performance.").

problems with the timeliness and accuracy of order processing and provisioning, as well as scalability of the order processing systems.[102]

1. Order Processing Problems Reflected in SBC's Performance Reports

Order processing problems are reflected in a number of SBC's performance reports:

Timely Return of Order Confirmations. Performance problems seem to be increasing for each of the three categories of UNE-loop orders.[103] First, for FOCs returned via the EDI interface, SBC argues that in the six-month period from May to October 1999, it satisfied the Texas benchmark for timeliness.[104] But it was in the most recent month of that period, October, that performance fell below the benchmark, and SBC's performance was even worse in November and December, with only 85.8 percent returned within five hours.[105] Second, for

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[102] *See FCC New York Order* ¶¶ 161-163.

[103] CLECs complain that the number of late FOCs is inadequately reflected in SBC's reported performance data. Nextlink has documented SBC significantly over-reporting its timely return of FOCs to Nextlink in November and December. Nextlink Barron Aff. ¶¶ 11-21.

[104] SBC Dysart Aff. ¶ 143. The Texas PUC benchmark is 95% FOCs returned within five hours, for orders submitted over EDI or LEX, regardless of whether these orders drop out for manual processing once received by SBC. Business Rules 1.6 at A-12 to A-13.

[105] In October, SBC reports only 88.1% of UNE-loop (1-50) FOCs returned over EDI were returned within 5 hours; the average time to return the FOCs was 2.12 hours. In November, SBC reports 92.7% timely return of UNE-loop (1-50) FOCs over EDI, but its average time to return the FOCs had increased to 5.72 hours. In December, SBC reports only 85.8% timely return of UNE-loop (1-50) FOCs via EDI, although its average time had improved again to 2.35 hours. UNE-loop (1-50) order volume over EDI rose from 27 orders in September to 118 in October, 179 in November and 254 in December. SBC 1999 Aggregated Performance Data, Measurement No. 5 ("Percent FOCs Received Within "X" Hours") (UNE-loop, 1-50) at 271-No. 5d; *id.*, Measurement No. 6 ("Average Time to Return FOC (Hours)") (UNE-loop, 1-50) at 271-No. 6d.

In its evaluation, the Texas PUC recognized that SBC had missed the benchmark for

FOCs returned via LEX, SBC admits that FOC returns have been chronically late, and states only that it can find no systemic explanation for missing the benchmark.[106] Third, for manually submitted orders, SBC's performance in returning timely confirmations declined from September through November. In December, SBC reported improvement in the percentage of orders returned on time, though the average time for these returns rose precipitously.[107] SBC has attributed these problems to a summer reorganization in its LSC, coupled with a period of

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UNE-loop FOC return over EDI in October and November, but relied on apparently compliant results (on extremely high volume) in August to conclude that no systemic problem exists. Texas PUC Evaluation at 39. The reported results in August, however, erroneously include some 11,000 UNE-platform orders in addition to the handful of UNE-loop orders. AT&T Pfau/DeYoung Decl. ¶ 92. Thus, the reported results in August are not indicative of actual performance on UNE-loop FOC returns -- as can be seen by reviewing SBC's reported results for the following months.

[106] SBC Dysart Aff. ¶ 140. SBC's performance for FOC returns via LEX has bounced around from 94% timely to 90% timely and back to 97% timely; average time has also varied from .9 hours to 2.1 hours. UNE-loop (1-50) order volume over LEX rose from 1479 orders in September 1999 to 1723 in October 1999, 2541 in November 1999, and 2142 in December 1999. SBC 1999 Aggregated Performance Data, Measurement No. 5 ("Percent FOCs Received Within "X" Hours") (UNE-loop, 1-50) at 271-No. 5b; *id.*, Measurement No. 6 ("Average Time to Return FOC (Hours)") (UNE-loop, 1-50) at 271-No. 6b.

[107] The Texas PUC benchmark is 95% FOCs returned within 24 hours for orders submitted manually to SBC. SBC Dysart Aff., Attach. A at A-12 to A-13. In September 1999, SBC returned 94.7% of its FOCs within 24 hours, but, in October 1999, SBC's benchmark performance had declined to 88.7%, and, in November 1999, SBC's performance had declined still further to 80.7%; in December 1999, the percentage of FOCs timely returned rose to 94.9%. SBC 1999 Disaggregated Performance Data, Measurement No. 5 ("Percent FOCs Received Within "X" Hours") (UNE-loop, 1-50) at 271-No. 5f. The average time to return FOCs was 37.2 hours in October 1999 (order volume 1578), improved to 23.6 hours in November 1999 (order volume 1028), but rose precipitously to 42.9 hours in December 1999 (order volume 777). *Id.*, Measurement No. 6 ("Average Time to Return FOC (Hours)") (UNE-loop, 1-50) at 271-No. 6f.

increasing CLEC volume, a failure of its LASR GUI and then more retraining of its order processing representatives.[108]

Timely Return of Order Rejections. SBC's time to manually process rejects on electronically submitted orders[109] has been significantly increasing. Fewer and fewer of these rejects are being returned within the benchmark interval of five hours,[110] while the average time for return has increased from 6.86 hours in July to 35.65 hours in December 1999.[111] SBC explicitly attributes this continuing decline in performance to the increasing volume of electronically submitted orders, which has increased the number of orders that entail manual reject processing.[112]

Post-provisioning Order Processing. After a UNE-loop order has been processed and provisioned, additional processing of the order information through SBC's back-end legacy systems is required to generate an official completion notice (Service Order Completion, or

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[108] SBC Dysart Aff. ¶¶ 147, 598.

[109] The reject measures are not broken out by order type; the numbers which follow relate to *all* orders submitted via EDI or LEX which were manually rejected.

[110] For Percent Manual Rejects Received Electonically and Returned in Five Hours, PM 10.1, SBC reported 81.4% timely returned in July, 59.5% timely returned in October, 65.1% timely returned in November and 69.5% timely returned in December 1999. SBC 1999 Aggregated Performance Data, Measurement No. 10.1, at 271-No. 10.1, 11.1

[111] For Mean Time to Return Manual Rejects Submitted Electronically, PM 11.1, SBC reported that the average return time was 6.86 hours (on 3658 rejects) in July and rose to 9.94 hours (on 6535 rejects) in November, and all the way to 35.65 hours (on 6698 rejects) in December 1999. *Id.*, Measurement No. 11.1, at 271-No. 10.1, 11.1.

[112] SBC Dysart Aff. ¶ 160.